

IC 15-3-3

Chapter 3. Commercial Fertilizers

IC 15-3-3-1

Short title

Sec. 1. This chapter shall be known as the "Commercial Fertilizer Law of 1953".

(Formerly: Acts 1953, c.30, s.1.) As amended by P.L.183-1983, SEC.53.

IC 15-3-3-2

State chemist

Sec. 2. (a) The office of state chemist is established. The state chemist shall be appointed by the governor, shall serve at the pleasure of the governor, and shall administer this chapter. Inasmuch as the department of biochemistry at Purdue University is particularly conversant with the purpose and procedures provided by this chapter it is the desire of the legislature that the governor should appoint a professor of biochemistry at Purdue University as the state chemist.

(b) The state chemist may designate an agent to discharge duties imposed on the state chemist by law.

(Formerly: Acts 1953, c.30, s.2.) As amended by P.L.183-1983, SEC.54; P.L.190-1987, SEC.1; P.L.40-1993, SEC.4.

IC 15-3-3-3

Definitions

Sec. 3. The following definitions apply throughout this chapter:

- (1) "Fertilizer material" means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that is used for its plant nutrient content and that is designed to have value in promoting plant growth. The term includes unmanipulated animal and vegetable manures.
- (2) "Mixed fertilizer" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.
- (3) "Commercial fertilizer" includes mixed fertilizer or fertilizer materials, except nonprocessed manure, marl, lime, wood ashes, and plaster.
- (4) "Brand" means a term, design, or trademark used in connection with one (1) or several grades of fertilizer.
- (5) "Grade" means the minimum percentage of total nitrogen, available phosphate (P_2O_5), and soluble potash (K_2O) stated in the order given in this definition.
- (6) "Official sample" means any sample of commercial fertilizer taken by the state chemist or the state chemist's agent.
- (7) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.
- (8) "Percent" or "percentage" means the percentage by weight.
- (9) "Person" includes an individual, partnership, association,

firm, limited liability company, and corporation.

(10) "Distributor" means a person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.

(11) "Sell" or "sale" includes exchange.

(12) "Specialty fertilizer" means a fertilizer distributed for nonfarm use.

(13) "Bulk fertilizer" means a fertilizer distributed in nonpackaged form.

(14) "Registrant" means a person who registers fertilizer under this chapter.

(15) "Storage" means storage of bulk fertilizer by a person who manufactures or distributes bulk fertilizer, or stores bulk fertilizer for personal use.

(16) "Board" means the Indiana fertilizer advisory board.

(17) "Blender" means a person who is engaged in the business of blending fertilizer materials.

(18) "Blending" means the physical mixing or combining of two (2) or more fertilizer materials, including the mixing, through the simultaneous application of two (2) or more fertilizer materials, to produce a uniform mixture.

(19) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet specific consumer requirements before blending.

(20) "Use" means the process of placing fertilizer to promote plant growth.

(Formerly: Acts 1953, c.30, s.3.) As amended by P.L.183-1983, SEC.55; P.L.190-1987, SEC.2; P.L.8-1993, SEC.231; P.L.125-1997, SEC.12; P.L.78-2001, SEC.2.

IC 15-3-3-4

Registration; necessity; frequency; application; fee; guaranteed analysis; exemptions

Sec. 4. (a) Before distribution in Indiana, each brand and grade of commercial fertilizer shall be registered in the name of the person whose name appears on the label. The application for registration shall be submitted to the state chemist on a form furnished by the state chemist and shall be accompanied by a fee of twenty dollars (\$20) for each grade of each brand. Fertilizers sold in packages of twelve (12) pounds or less shall be registered for a fee of fifty dollars (\$50) for each grade of each brand. Upon approval by the state chemist, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 each year.

(b) In addition to the appropriate filing fee set forth in subsection (a), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee shall be assessed:

(1) for an application to renew the registration of a commercial fertilizer under this section that is received after July 31; or

(2) on a product that must be registered under this section before distribution in Indiana but is found to be in distribution

before registration.

(c) The application shall include the following information:

- (1) The name and address of the registrant.
- (2) The brand and grade.
- (3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

Total Nitrogen	percent
Available Phosphate (P_2O_5)	percent
Soluble Potash (K_2O)	percent

When applied to mixed fertilizers, grade shall be given in whole numbers only. However, the state chemist may permit fractional numbers to be used for specialty fertilizers or when additional plant food elements or other additives are added. Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphate and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphate need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guaranteed only by permission of the state chemist who shall grant such permission only if the state chemist determines that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the dean of agriculture of Purdue University or the dean's designee. When any such additional plant foods are claimed, they shall be included in the guarantee in the form of the element and shall be subject to inspection and analysis in accordance with the methods that may be prescribed by the state chemist.

(d) A distributor is not required to register a brand of commercial fertilizer that is registered under this chapter by another person if the label used by the distributor does not differ in any respect from that used by the registrant.

(e) A distributor who acts as a blender is not required under subsection (a) to register a custom blend that the distributor produces if the fertilizer materials blended together to produce the custom blend are registered under subsection (a). However, a distributor who acts as a blender shall provide the state chemist with the following information about each custom blend that the distributor produces:

- (1) The name and address of the distributor.
- (2) The brand and grade of the custom blend.
- (3) The guaranteed analysis of the custom blend showing the minimum percentage of plant food claimed in the following order and form:
 - (A) The percent of total nitrogen.
 - (B) The percent of available phosphate (P_2O_5).
 - (C) The percent of soluble potash (K_2O).

(Formerly: Acts 1953, c.30, s.4.) As amended by P.L.183-1983, SEC.56; P.L.190-1987, SEC.3; P.L.40-1993, SEC.5; P.L.125-1997, SEC.13; P.L.78-2001, SEC.3.

Labeling requirements

Sec. 5. (a) Any commercial fertilizer offered for sale or sold or distributed in this state in bags or other containers shall have placed on or affixed to the container, in written or printed form, the net weight and the information required by section 4(a) of this chapter either:

- (1) on tags affixed to the end of the package between the ears and/or on the sewed end; or
- (2) directly on the package.

(b) If distributed in bulk, a written or printed statement of the weight and the information required by section 4(a) of this chapter shall accompany delivery and be supplied to the purchaser at time of delivery.

(Formerly: Acts 1953, c.30, s.5.) As amended by P.L.183-1983, SEC.57.

IC 15-3-3-6**Inspection fee**

Sec. 6. (a) An inspection fee shall be paid to the state chemist for all commercial fertilizers distributed in Indiana to persons who are not registrants or permit holders:

- (1) in bulk; or
- (2) in packages exceeding twelve (12) pounds.

(b) The inspection fee shall be charged at the rate of forty-five cents (\$0.45) per ton. If a fertilizer tonnage report is required under this chapter, the minimum inspection fee is ten dollars (\$10) semiannually. Sales or exchanges between importers, manufacturers, distributors, or registrants are exempt from the inspection fee. All fees collected by the state chemist under this chapter shall be paid to the treasurer of Purdue University to be used in meeting all necessary expenses in carrying out this chapter, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins, giving the results of the work of fertilizer inspection as provided for by this chapter, and for any other expenses of Purdue University agricultural programs authorized by law and in support of the purposes of this chapter. The dean of agriculture shall make to the governor an annual classified report, showing the total receipts and expenditures of all fees received under this chapter.

(c) Each registrant shall apply to the state chemist for a permit to report the tonnage of commercial fertilizer sold and pay the inspection fee of forty-five cents (\$0.45) per ton on the basis of the report. In making the application, the registrant must agree to the following:

- (1) To keep records that the state chemist requires to indicate accurately the tonnage and kinds of commercial fertilizers sold in Indiana.
- (2) To grant the state chemist permission to examine those records and verify the statement of tonnage.
- (3) To report under oath to the state chemist on forms furnished by the state chemist the tonnage of commercial fertilizer sold

during the period covered.

(d) The state chemist may grant the permit if the state chemist determines that such a report of fertilizer will lead to efficient enforcement of this chapter and may revoke the permit at any time if it appears to the state chemist that the registrant is not complying with the terms of the agreement entered into at the time of the issuance of the permit or this chapter. The report of tonnage is due and the inspection fees are payable semiannually on the last day of the month following the end of the semiannual period. If the report is not filed and the inspection fee paid by the fifteenth day following the due date or if the report of tonnage be false or if the labeling requirements of this chapter have not been complied with, the state chemist may revoke the permit.

(e) If the inspection fee is unpaid after the fifteen (15) day grace period, a penalty shall be assessed in the amount of fifty dollars (\$50) or ten percent (10%), whichever is greater, in addition to the amount due.

(Formerly: Acts 1953, c.30, s.6.) As amended by P.L.183-1983, SEC.58; P.L.190-1987, SEC.4; P.L.40-1993, SEC.6; P.L.125-1997, SEC.14; P.L.78-2001, SEC.4.

IC 15-3-3-6.5

Excess funds accumulated from fees collected; disposition

Sec. 6.5. (a) Notwithstanding any other provision, all excess funds accumulated from the fees collected by:

- (1) the state chemist, under this chapter, IC 15-3-3.5, and IC 15-4-4;
- (2) the state seed commissioner under IC 15-4-1; and
- (3) the dean of agriculture of Purdue University under IC 15-5-13;

shall be paid to the treasurer of Purdue University. The funds shall be administered by the board of trustees of Purdue University.

(b) On approval of the governor and the budget agency, the board of trustees may spend the excess funds for the construction, operation, rehabilitation, and repair of buildings, structures, or other facilities used for:

- (1) carrying out the purposes of those chapters referred to in subsection (a) under which the fees are collected; or
- (2) the agricultural programs authorized by law and in support of the purposes of the chapters referred to in subsection (a).

(Formerly: Acts 1975, P.L.133, SEC.1.) As amended by P.L.40-1993, SEC.7.

IC 15-3-3-7

Inspection, analysis, and tests; entry upon private premises; results of official analysis

Sec. 7. (a) It is the duty of the state chemist to sample, inspect, make analysis of, and test commercial fertilizers distributed within Indiana, and to inspect the storage of bulk fertilizers in Indiana at a time and place and to such an extent as necessary to determine

whether the commercial fertilizers and their storage are in compliance with this chapter. The state chemist may enter upon any public or private premises during regular business hours in order to have access to fertilizers and plans and records relating to the transportation, storage, sale, and use of fertilizers, subject to this chapter and the rules adopted under this chapter.

(b) The methods of sampling and analysis shall be those adopted by the state chemist from sources such as those of AOAC International. In cases of dispute, AOAC International's methods prevail if such are available.

(c) The state chemist, in determining for administrative purposes whether any commercial fertilizer is deficient in plant foods, shall be guided solely by the official sample obtained and analyzed as provided in subsection (b).

(d) The results of the official analysis of a commercial fertilizer that has been found to be subject to penalty or other legal action shall be forwarded by the state chemist to the registrant at least thirty (30) days before the report is submitted to the purchaser, except that on requested inspections results shall be forwarded to the registrant and purchaser at once. If during that period no adequate evidence to the contrary is made available to the state chemist, the report shall become official. Upon request, the state chemist shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

(Formerly: Acts 1953, c.30, s.7.) As amended by P.L.183-1983, SEC.59; P.L.190-1987, SEC.5; P.L.138-1996, SEC.1; P.L.139-1996, SEC.1; P.L.125-1997, SEC.15; P.L.78-2001, SEC.5.

IC 15-3-3-8

Noncompliance with guaranteed analysis; order for refund to purchaser; appeal

Sec. 8. (a) If the analysis shall show that a commercial fertilizer falls short of the guaranteed analysis in any respect, the state chemist may require the payment of a refund to the purchaser in the amount of the current value of the plant food deficiency. Receipts for payment of refunds are to be forwarded promptly to the state chemist. If such purchaser can not be found, the refund shall be paid to a local charitable or educational organization and receipts forwarded promptly.

(b) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.

(Formerly: Acts 1953, c.30, s.8.)

IC 15-3-3-9

Misbranded or adulterated fertilizer; unlawful distribution

Sec. 9. (a) A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or

associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

(b) It is unlawful to distribute an adulterated commercial fertilizer. For purposes of this subsection, a commercial fertilizer is adulterated if:

- (1) it contains any deleterious or harmful substance in a sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or
- (2) adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label.

(Formerly: Acts 1953, c.30, s.9.) As amended by P.L.78-2001, SEC.6.

IC 15-3-3-10

Fraudulent or deceptive practices; cancellation of registration; refusal to register

Sec. 10. The state chemist is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this chapter or any rules and regulations promulgated thereunder. Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the state chemist.

(Formerly: Acts 1953, c.30, s.10.) As amended by P.L.183-1983, SEC.60.

IC 15-3-3-11

Annual publication of sales information

Sec. 11. The state chemist shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial fertilizers, together with such data on their sale as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold within the state as compared with the analysis guaranteed under section 4 and section 5 of this chapter. Provided, however, that the information concerning the sale of commercial fertilizers shall be shown separately for the fall season and spring season of each year, and that no disclosure shall be made of the operations of any person.

(Formerly: Acts 1953, c.30, s.11.) As amended by P.L.183-1983, SEC.61.

IC 15-3-3-11.5

Storage of bulk fertilizers

Sec. 11.5. Bulk fertilizers must be stored in a manner that minimizes the release of fertilizer and protects the waters of the state.
As added by P.L.138-1996, SEC.2 and P.L.139-1996, SEC.2.

IC 15-3-3-12

Rules for enforcement

Sec. 12. The state chemist may adopt rules under IC 4-22-2 relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state.

(Formerly: Acts 1953, c.30, s.12.) As amended by P.L.183-1983, SEC.62; P.L.190-1987, SEC.6; P.L.138-1996, SEC.3; P.L.139-1996, SEC.3; P.L.78-2001, SEC.7.

IC 15-3-3-12.5

Effectiveness of rules; use of additional methods that protect state waters from release of bulk fertilizer

Sec. 12.5. (a) The rules set forth in 355 IAC 2-2 through 355 IAC 2-9, as published in the Indiana Register on April 1, 1991, are effective until the state chemist adopts revisions to the rules.

(b) The state chemist may allow the use of technologies or methods other than those specified in the administrative rules adopted by the state chemist under subsection (a) and section 12 of this chapter, if the technologies or methods provide substantially similar protection to the waters of the state from the release of bulk fertilizer as provided by the rules.

(c) Except as provided in subsection (d), a political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the storage or utilization of fertilizer.

(d) A political subdivision may, by resolution, petition the state chemist for a hearing to allow a waiver to adopt an ordinance because of special circumstances relating to the storage or utilization of fertilizer. If a petition is received, the state chemist shall hold a public hearing to consider allowing the waiver requested. The public hearing must be conducted in an informal manner. IC 4-21.5 does not apply to a public hearing under this section.

As added by P.L.138-1996, SEC.4 and P.L.139-1996, SEC.4. Amended by P.L.78-2001, SEC.8.

IC 15-3-3-13

Stop sale, use, or removal orders

Sec. 13. The state chemist may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the state chemist finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and said commercial fertilizer is released in writing by the state chemist or said violation has been otherwise legally disposed of by written authority. The state chemist shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal has been paid.

(Formerly: Acts 1953, c.30, s.13.) As amended by P.L.183-1983, SEC.63.

IC 15-3-3-14

Seizures; condemnation and disposal; release; processing and relabeling

Sec. 14. Any lot of commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the state chemist to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this chapter and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state. Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this chapter.

(Formerly: Acts 1953, c.30, s.14.) As amended by P.L.183-1983, SEC.64.

IC 15-3-3-15

Violations; minor violations; prima facie evidence; injunction

Sec. 15. (a) A person who:

- (1) knowingly makes a false statement in application for registration required in section 4 of this chapter;
- (2) offers for sale or sells, by sample or otherwise, any package or sample, or any quantity, or any commercial fertilizer, the analysis and brand of which has not been registered as provided in section 4 of this chapter;
- (3) fails to pay the fees as provided in section 6 of this chapter;
- or
- (4) otherwise violates this chapter;

commits a Class C infraction. In all prosecutions involving the composition of a commercial fertilizer, a certified copy of the official analysis signed by the state chemist shall be accepted as prima facie evidence of the composition.

(b) The state chemist need not report, for prosecution or for the institution of seizure proceedings, minor violations of this chapter when he believes that the public interest will be best served by a suitable notice of warning in writing.

(c) The state chemist may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(Formerly: Acts 1953, c.30, s.15.) As amended by Acts 1978, P.L.2, SEC.1514; P.L.1-1992, SEC.93.

IC 15-3-3-16

Sales or exchanges by importers, manufacturers, or manipulators

Sec. 16. Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale, or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

(Formerly: Acts 1953, c.30, s.16.) As amended by P.L.183-1983, SEC.65.

IC 15-3-3-17

Indiana fertilizer advisory board

Sec. 17. (a) The Indiana fertilizer advisory board is established to study the regulation of fertilizer and to advise the state chemist on the administration of this chapter.

(b) The board consists of the following members:

- (1) Two (2) representatives of the retail fertilizer industry.
- (2) One (1) representative of fertilizer manufacturing, distributing, or manufacturing and distributing.
- (3) Two (2) representatives of producers of agricultural crops.
- (4) One (1) representative of the lawn care industry.
- (5) One (1) representative of the Purdue School of Agriculture.
- (6) One (1) representative of a public conservation organization.
- (7) The president of the Indiana Plant Food and Agricultural Chemicals Association, who shall serve as a nonvoting member.
- (8) One (1) representative of the department of environmental management, who shall serve as a nonvoting member.
- (9) The fertilizer administrator for the office of the state chemist, who shall serve as a nonvoting member.
- (10) The engineer specialist for the office of the state chemist, who shall serve as a nonvoting member.

(c) The voting members of the board shall be appointed by the state chemist for terms of four (4) years.

(d) Voting members of the board may be appointed for successive terms at the discretion of the state chemist.

(e) The state chemist may remove a voting member of the board for cause before the expiration of the member's term.

(f) Vacancies created by the death, resignation, or removal for cause of a member of the board must be filled in the manner prescribed for appointment to that board position. Vacancies must be filled within thirty (30) days of the death, resignation, or removal for cause.

(g) The board shall elect one (1) of its voting members chairperson to serve for a term of two (2) years, unless the chairperson's appointment expires before the expiration of the term, in which case the term is for the duration of the chairperson's appointment.

(h) The board may meet at times specified by the chairperson or by a majority of the board, but shall not meet less than annually.

(i) Five (5) voting members of the board constitutes a quorum. Official actions require a majority of the voting members. The chairperson may actively participate in all decisions of the board.

(j) Each member of the board who is not a state employee is entitled to receive both of the following:

(1) The minimum salary per diem provided by IC 4-10-11-2.1(b).

(2) Reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

Each member of the board who is a state employee is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(k) The board shall invite nonvoting members to serve at the pleasure of the board.

As added by P.L.125-1997, SEC.16.